

### **REMARKS/ARGUMENTS**

Claims 1-28 are pending in the application and are rejected. In response, the claims are amended as follows. Claim 1 is amended to incorporate therein the subject matter of claims 3 and 9. Claims 3 and 9 are, accordingly, canceled from the application without prejudice or disclaimer due to the amendment to claim 1. Claims 2, 5-8 and 10-16 have been amended to change “cosmetic composition” to “nail varnish” to take into account the amendment to claim 1. Still further, new claim 29 is proposed for addition to the application. Claim 29 is essentially a combination of the subject matter originally set forth in claims 1 and 4. Claim 4 is, thus, canceled from the application without prejudice or disclaimer. Furthermore, claims 17-26 have been amended to change “cosmetic composition” to “lip gloss composition” due to the dependence of the subject claims on new claim 29.

All of the claim amendments, as well as new claim 29, are submitted as being entirely supported by the application as filed. Thus there is no issue of new matter. Entry of the amended claims and the new claim is, therefore, respectfully requested. Upon such entry, claims 1-2, 5-8, 10-28, as amended, and new claim 29 will be pending in the application for consideration by the Examiner.

Reconsideration of the application is respectfully requested.

### **Rejections Under 35 U.S.C. §103**

In ¶4 on p. 3 of the Office Action claims 1-6, 8, 12, 15-16 and 24-26 are rejected under 35 U.S.C. §103 as allegedly obvious over U.S. Patent No. 4,321,087 to Levine et al., as evidenced by Seubert, *PVD Aluminum Pigments: Superior Brilliance for Coatings and Graphic Arts*, in view of U.S. Patent No. 5,624,076 of Miekka et al. The rejection is respectfully traversed.

In response to the above rejection, applicants respectfully direct the Examiner’s attention to p. 8 of the Office Action, under the heading “Response to Arguments”, wherein the Examiner asserts that the mirror-like surface of the PVD aluminum (“PVDA”) pigments obtained by the method disclosed in Levine et al. would constitute a diffractive structure. Applicants respectfully submit, however, that as explained in greater detail below, the PVDA pigments obtained by the process of Levine et al. are characterized by a markedly different surface topography when

compared to the PVDA pigments used according to the claims of the present application, as well as in comparison with the PVDA pigments described in Miekka et al.

As outlined in Miekka et al. at col. 2, lines 43 to 63, the process described in Levine et al. produces very thin, bright metallic flakes having extremely smooth (mirror-like) surfaces which, when properly employed, serve to provide metal-like or mirror-like optical effects. On the contrary, the pigments recited for use in the claims of the present application, as well as the pigments described in Miekka et al. are characterized by a diffraction grating, which is formed on the surface of the pigment, thus resulting in the generation of an iridescent visual effect. The diffraction grating is obtained by the formation of closely and regularly spaced grooves which are embossed on the reflective surface of the PVDA pigment.

Consequently, the PVDA pigments obtained according to Levine et al. and the PVDA pigments described in Miekka et al., as well as the PVDA pigments as presently claimed are structurally different. As set forth in Seubert et al. pp. 6-7 under the heading, "Surface Topography", a smooth (mirror-like) surface of a PVDA pigment obtained, for example, by the process disclosed in Levine et al. possesses a brilliant mirror-like effect due to the uniform reflection of the incident light (see Seubert et al., Fig. 11).

Furthermore, since PVDA pigments display a homogeneous thickness and hardly any surface defects, a high level of specular reflectance of the incident light is obtained (see Seubert et al., Fig. 12). However no diffraction of the reflected light into its color components occurs.

The PVDA pigments as recited in the present claims, as well as those disclosed in Miekka et al. do not have a smooth surface. Instead, a diffraction grating is formed on the pigments by embossing closely and regularly spaced grooves on the reflective surface of the PVDA pigments. As a result of this structure, reflected light is diffracted into its color components, resulting in the generation of an iridescent visual effect.

In summary, the process described by Levine et al. which, as noted above, produces very thin, bright metallic flakes with extremely smooth (mirror-like) surfaces does not suggest to one having at least an ordinary level of skill in this art the use of PVDA pigments having diffractive structures containing from approximately 5,000 to approximately 20,000 structural elements on their surface.

Furthermore, an artisan of ordinary skill in this field is not in any manner motivated by the teaching of Levine et al. to replace PVDA pigments having an extremely smooth (mirror-like) surface, having hardly any surface defects, with PVDA pigments having a diffraction grating obtained by embossing closely and regularly spaced grooves on the refractive surface of the PVDA pigment.

It is also important to note that Levine et al. was considered the relevant state of the art in terms of the disclosure contained in Miekka et al. wherein the latter reference clearly describes a diffractive structure. Thus, the issuance of a patent to Miekka et al. clearly evidences that the process disclosed in Levine et al. does not produce a diffractive structure, nor does it suggest a composition including PVDA pigments having a diffractive structure.

In closing, applicants submit that the subject rejection includes claim 4. New claim 29 directed to a lip gloss is, in essence, a combination of claims 1 and 4. Both Levine et al. and Miekka et al. teach the use of wax as a release coating (Levine et al., col. 3 lines 42-49; Miekka et al., col. 5 lines 13-20). The release coating is applied onto the carrier sheet prior to metallization in order to enhance the release of the metal film from the carrier sheet. By solubilizing the release coating, in a solvent, the metal film is stripped from the carrier sheet (Levine et al., col. 4 lines 29-35; Miekka et al., col. 4 line 67 to col. 5 line 20). Neither Levine et al. nor Miekka et al., however, disclose to use one or more such waxes in a composition comprising PVDA pigments. Claim 29, therefore, is also believed to be distinguishable over the subject combination of references.

For all of the reasons presented above, therefore, the Examiner is respectfully requested to reconsider and withdraw the rejection under 35 U.S.C. §103 of claims 1-2, 5-6, 8, 12, 15-16 and 24-26. Furthermore, claim 29 is also believed to be distinguishable from the cited combination of references for the reasons given.

Further, in ¶5 on pp. 4-5 of the Office Action, claims 7, 9-11, 13-14, 18, 21-22 and 27-28 are rejected under 35 U.S.C. §103 over the Levine et al. '087 U.S. patent in view of the Miekka et al. U.S. '076 patent as applied to the claims discussed above, and further in view of U.S. Patent Publication No. 2003/0175225 of Leacock et al. The rejection is respectfully traversed for the reasons set forth below.

Claim 1 has been amended to include the subject matter of, *inter alia*, claim 9, which claim is included in the rejection. Claim 1, for the reasons given above, is believed to be distinguishable over the combination of Levine and Miekka et al. Turning, then to a discussion of the effect of combining Leacock et al. with Levine et al. and Miekka et al., it is noted that Leacock et al. is directed to a nail enamel composition (as is amended claim 1, et seq.) containing pearlescent pigments and aluminum effect pigments. The nail enamel composition of Leacock et al. shows an optical effect that is due to pearlescent pigments over a metallic background (see Leacock et al. paragraph 8). The angle-dependent pearlescent effect obtained by coating silicon dioxide with a metal oxide is caused by the generation of an interference color (see Leacock et al. paragraph 17). This, however, is a different physical effect than the diffraction of light by a diffractive structure located on the surface of the PVDA pigments according to the claims of the present application.

As noted above in the discussion relating to the rejection under 35 U.S.C. §103 of claims 1-6, 8, 12, 15-16 and 24-26, due to the refractive structure(s) on the surface of the PVDA pigment, reflected light is diffracted into its colored components, thus resulting in the generation of a metallic rainbow color effect (see the present application at p. 5, line 15 to page 6, line 6). The angle-dependent pearlescent effect, however, is caused by the generation of an interference color, which is generated by the refraction of light (see, e.g., Leacock et al. paragraph [0017]).

Further to the above, when using a mixture of pearlescent effect pigments and aluminum platelets - as described in Leacock et al. - the interference effect is diminished by the presence of the opaque aluminum effect pigments.

Thus, starting from the combination of the teachings of Levine et al. the addition of Leacock et al. does not provide any hint or suggestion to one having an ordinary level of skill in this art to use only aluminum effect pigments with diffractive structures in a nail varnish.

The optical effect demonstrated by PVDA pigments having diffractive structures is a significant multi-color flop, which is not diminished substantially due to the presence of a second pigment. Therefore, the multi-color flop is dominant. Thus, a pigment system with such a multi-color flop does not have a liquid metal-like appearance. Leacock et al. clearly teaches a skilled artisan to use a combination of two different types of effect pigments, namely pearlescent

pigments for providing multi-color effects, and aluminum effect pigments for providing a metallic appearance. Nothing in either Leacock et al. or in Levine et al., or in the combination of the cited references would tend to suggest to a skilled artisan to use only PVD-aluminum pigments, having diffractive structures. Furthermore, as the skilled artisan would also know, in the cosmetic field it is always to use the least possible number of components in order to avoid the potential for side effects caused due to the use of the cosmetic, i.e., such as the nail varnish and lip gloss (claim 29) compositions that are presently claimed.

Still further, when using a mixture of pearlescent effect pigments and aluminum effect pigments, i.e, as taught by Leacock et al., it is absolutely necessary to additionally include a suspending agent in order to avoid agglomeration of the effect pigments. Such a suspending agent is neither taught for use by the applicants in the specification of the present application or recited in the presently pending claims. That is, suspending agent(s) is/are not necessary in the presently claimed formulation(s) since, as explained above, the presence of the diffractive structures significantly reduces the risk of such agglomeration.

For all of the reasons set forth above, therefore, the Examiner is respectfully requested to reconsider and withdraw the rejection under 35 U.S.C. §103 of applicants' claims 7, 9-11, 13-14, 18, 21-22 and 27-28.

Still further, in ¶6 on p. 6 of the Office Action, claims 17, 19, 20 and 23 are rejected under 35 U.S.C. §103 over Levine et al. in view of Miekka et al. and further in view of U.S. Patent No. 6,042,842 of Lemann et al. The rejection is respectfully traversed.

The rejected claims all depend from claim 1 and thus they all include all of the features recited in the subject independent claim. Claim 1, and thus claims 17, 19, 20 and 23 depending therefrom, are believed to be distinguishable over the combination of Levine et al. and Miekka et al. for the reasons discussed above.

Turning, then, to a discussion of the Lemann et al. reference, applicants respectfully submit that this reference fails to remedy the deficiencies, noted above, inherent in the combination of Levine et al. and Miekka et al. The Lemann et al. reference seems to be cited due to its disclosure regarding the oils, such as castor oil and oleyl alcohols, for example; however, it is completely silent with regard to the use of aluminum effect pigments in, e.g., nail varnishes.

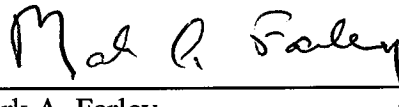
Thus, the reference, when taken in combination with Levine and Miekka et al. does not - as noted above - remedy the deficiencies of the other references discussed above. As such, the Examiner is respectfully requested to reconsider and withdraw the rejection under §103 of claims 17, 19, 20 and 23.

**Summary**

The claim amendments and arguments presented above are believed to be sufficient to overcome all of the claim rejections set forth in the present Office Action. The Examiner, therefore, is respectfully requested to reconsider and withdraw all of the claim rejections and to issue a Notice of Allowance for all of the claims pending in the application.

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Respectfully submitted,



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Mark A. Farley  
Registration No.: 33,170  
OSTROLENK FABER LLP  
1180 Avenue of the Americas  
New York, New York 10036-8403  
Telephone: (212) 382-0700

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